

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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LOCAL 147, LABORERS INTERNATIONAL UNION
OF NORTH AMERICA (NORTHEAST REMSCO
CONSTRUCTION, INC.)
and
RICHARD BACQUIE, *ProSe*

Case No. 02-CB-231600
**MOTION EXEMPTIONS
AND BRIEF**

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**MOTION FOR EXCEPTIONS and BRIEF BEFORE THE EXECUTIVE BOARD
of THE NATIONAL LABOR RELATIONS BOARD**

Richard M. Bacquie acting Prose respectfully submits exemptions and/or brief as form or relief in relations to Administrative Law Judge decision dated on or about March 25th, 2020, where Richard Bacquie complaint was dismissed.

I. ISSUES PRESENTED

- A. Charging party Richard Bacquie right and/or denial of counsel to which he had a right to and was not given instructions as to that right nor was charging party given the right to self-representation as ProSe in this matter.
- B. Charging party right to access and provide expert witness which would have aided the Law Judge to make a clear decision based on the weight of the evidence presented with expert testimony.

C. Judicial Prejudice in making findings as an expert and misrepresentation and/or disregarding areas of the record that are clear to the facts of the case presented before the court.

II. STATEMENT OF FACTS

Background

1. Charging party Richard Bacquie is a member of local union 147 which is located at 4332 Katonah Ave, Bronx New York and filed a complaint against Local 147, Laborers' International Union of North America (LIUNA)(herein, "respondent "or "the union") on or about November 23rd, 2018.
2. A trial was held on or about September 4th through the 6th, October 10th and November 1, 2019 at which point Counsel for General Counsel and Counsel for responded made closing arguments before the court and later submitted briefs supporting the positions of either party.
3. On or about March 25th, 2020 the court issued it's decision and order dismissing the complaint filed by charging party Richard Bacquie based on lack of ability to make out audio recording and perception of testimony of witnesses presented to the court.
4. Charging party Richard Bacquie received a call from the Executive Board requesting the acceptance of the court's decision and order via Email, which did not arrive and was never served by the Executive Board of the courts ruling.
5. General counsel nor counsel for General counsel had tried to contact Charging party Richard Bacquie with notification of the court's order dated March 25th, 2020, as the obligation to do so was deemed not required.

6. General counsel denied Charging party request for remedy concerning the dismissal by the court dated March 25th, 2020, and charging party contacted Executive Clerk regarding not being served with the decision and process to appeal said order.
7. Executive clerk addressed the error and reissued and order allowing Exceptions and brief until June 9th, 2020, an extension of time was filed to and denied to continue to seek and attorney due to unforeseen issues related to the pandemic of the COVID-19.
8. Motion for reconsideration was filed and support motion was also filed under Exceptional neglect doctrine and later Executive reversed its denial and granted 30 of the 90 days requested within the motion.
9. A Motion for an additional extension was filed by Richard Bacquie and denied by the Executive Clerk in an expedited fashion with out the option of rebuttal to Respondent counsel petition in opposition which Charging Party was not given the opportunity to challenge Respondent false claims.
10. Charging party Richard Bacquie acting Prose is filing said petition under duress before this board as motion for 2nd extension was denied with out a chance to respond to counsel for respondent's opposition which was with error.

ARGUMENTS

I. RIGHT TO COUNSEL FOR CHARGING PARTY AND RIGHT TO SELF REPRESENTATION BEFORE THE COURT

1. Charging party does not recall ever being informed of his right to independent counsel who would have protected and advised Richard Bacquie in what would be his best interest. This right was not an option before Richard Bacquie, and he was not aware of this right.

2. It is clear Richard Bacquie was never instructed by the court to Richard Bacquie on any of the dates at trial from September 4th through the 6th of 2019, October 10th, and November 1st, 2019 regarding the constitutional right to be advised and represented by counsel of his choosing.
3. Richard Bacquie was never instructed by General counsel from region 2 of the National Labor Relations Board of this right to independent counsel to represent his best interest, to protect his right, and act when needed for the defense of Richard Bacquie.
4. Had Richard Bacquie been informed of this constitutional right to counsel he would have retained a component.
5. Tr. Pg. 86 line 23 – 25, Tr. Pg. 87 line 1 Richard Bacquie is denied the right to address to court and only spoke to counsels:

THE WITNESS: Can I Say Something, Your Honor?

JUDGE ESPOSITO: No. No. No, sir. This really is the attorney's responsibility, all right, and not yours. The attorney has to deal with the subpoena and not you.

6. Richard Bacquie never identified anyone as counsel to represent him as he was never afforded the right to select counsel for the said proceedings. (See Avery v. Alabama, 308 U.S. 444, 446 (1940) "The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment".
7. Here and in other instances Judge Esposito makes the formal appointment of counsel for General Counsel Richard Bacquie counsel as well.
8. Tr. Pg 258 -265 there were no representation present to defend Richard Bacquie for the allegations presented by responding counsel to the court and was prejudicial to Richard Bacquie, this was all done in the presence of Christopher Fitzsimmons who later testified as a witness for charged party.

9. Tr. Pg. 273 line 11 – 15 responded counsel accuses Richard Bacquie of an allegation unsupported and without representation of counsel Richard Bacquie answers.
10. Had Richard Bacquie had counsel in his best interest this allegations and others like it through out the record would not have accrued.
11. Tr. Pg. 286 -287 Richard Bacquie is asked a series of questions regarding a pending case, and without representation of counsel Richard Bacquie tried his best to handle the matter as best he could, which would have been starkly different had counsel been afforded.
12. Tr. Pg. 350 Judge Esposito states that counsel for general counsel is not counsel for charging party Richard Bacquie.

“JUDGE ESPOSITO: I don’t need – I don’t need briefs. But I would just point out, Mr. Shimpi, that, you know you’ve – I know you’re not – I know your not counsel for Charging Party’s attorney.”

13. In Sum Charging Party Richard Bacquie had the constitutional right to have counsel before the court and was never made aware of this right, was prejudiced which is clear through out the record and denied proper counsel. Charging Party was never given the opportunity to cross examine the witnesses presented to the court.
14. Charging Party was never given instruction as to the right to self-representation before the court which is indeed prejudicial.
15. As a result, he could not have had fair and impartial representation, to counsel him correctly and fairly and to protect his best interest. Charging Party was prejudiced by not being afford the right to have counsel at his best interest and for this reason, Charging Party request a new trail be ordered.

II. CHARGING PARTY RIGHT TO ACCESS AND PROVIDE EXPERT WITNESS

1. Within the Courts decision by Judge Esposito dated March 25th, 2020, your honor make numerous references as to her ability not to clearly hear the voices and or words from the audio submitted into evidence by Counsel for General Counsel.
2. Judge Esposito also without expert witness testimony takes the position as an expert as to state frame of mind and interpretation of statements from the audio record. There were not any experts to testify as to the emotional state of either party the frame or context of language used within the recording.
3. Your honor should weigh the evidence on it face value and merit does not act as an expert in the fields of audio recognition, and or phycology. Witness in these fields were not present to testify as to validate any of your Honors self-proclaimed interoperations.
4. General Counsel was aware of the audio quality and with the years of experience should have saw fit to produce experts to ensure the weight of the evidence is creditable as submitted and to clarify the voices and statements made.
5. General Counsel did not afford Charging Party Richard Bacquie the right to have any expert witness go over the evidence and testify to its merits.
6. Judges Order dated March 25th, 2020 your Honor States on Pg. 33 "I am unable to determine who was speaking." Your honor also states, "the statement, "You're done!" is sufficiently vague that it could have referred to the ending of the altercation"
7. On Pg. 19 top paragraph of your Honors decision she states, "a statement which is not audible or the recording."

8. Expert witnesses would have given clarity to the weight of the evidence presented before the court and aided to make a decision based on expert accounts after reviewing the evidence with there years of experience and or the use of advance technology to ensure capturing barely audible statements recorded and submitted into evidence.
9. For these reason Charging Part request and new trail so that the weight of the evidence can be properly examined and judged.

III. JUDICIAL PREJUDICE OF CHARGING PARTY

1. Here the entire record and order needs review your honor made in here decision which resulted in the dismissal of the charge. Several misquotes as to statements and self-interpretations as what she believed was meant.
2. Your honor is not an expert in phycology nor an expert with the field of audio recordings, yet your honor made her decision based off that perception to do so which is prejudicial to charging party as there is not an opposing position to the determinations made by your Honor.
3. This interpretation poses as a one-sided defense for the respondent in this matter and a review of the record is in order.
4. Your honor clearly over looked statement made by respondent counsel admitting respondent indeed made the statement of threats which is review able in the transcripts Tr. Pg 428-429

“ MR. STRUM: -- and pull, if you say a magic word that slips out of your mouth, you’re guilty and you have to commit yourself to a – you know, you’re going to be, you know –“

“ MR. SHIMPI: Objection. “

“ MR. STURM: --required to post notices from here to eternity.”

5. Respondent counsel was clearly stating the respondent had in fact made the threat as charged, he was not speaking from speculation but fact he stated "If you say a magic word that slips out of your mouth" this is not a speculative statement by counsel but an omission.
6. And after your honors though review it was over looking inclusive of all the memorial evidence that was presented such as letters that were uncontested related to the threat, text messages presented into evidence that memorialized the threat and never contested by respondent.
7. Facebook live video Charging Party testified to memorializing the threat that was made by respondent, although it was not submitted into evidence it was made part of the record via testimony Tr. Pg. 276 – 280 Charging Party testified extensively regarding social media memorializing of the events.
8. Your honor weighs the credibility of Charging Party on two small factors one regarding reception of Union Constitution and responding to counsel who was badging Richard bacquie as he testified.
9. Your honor completely overlooked the fact that all who testified were family and long-time relationship as friends and have a vest interest to obtain a favorable outcome.
10. Based on the aforementioned, relief in the form of a new trial is in order as Charging Party suffered prejudice due to the Courts decision and order dated March 25th, 2020.

WHEREFORE, Charging Party seeks relief in the for of a new trial and Charging party experienced extreme prejudice and the proceeding held at Region 2 of the National Labor Relations Board in the State of New York. Charging Party prays relief will be granted in the best interest of justice.

SIGNED:

DATE: July 20th, 2020

s/ Richard Bacquie
RICHARD M. BACQUIE ProSe
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CERTIFICATION OF SERVICE

I Certify that the within motion for Extension of Time, The Following parties were served this day by depositing it via email attachment, and addressed to the following listed parties:

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SIGNED:

DATE: July 20th, 2020

s/Richard M. Bacquie

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